

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

WAYNE THOMAS JOHNSON,)	
)	
Plaintiff,)	
)	
v.)	1:09CV770
)	
FREDERICK HUBBARD, et al.,)	
)	
Defendant(s).)	

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, a prisoner of the State of North Carolina, submitted a civil rights action pursuant to 42 U.S.C. § 1983, together with an application to proceed *in forma pauperis*. The case was filed in the United States District Court for the Eastern District of North Carolina, but has been transferred to this Court. The form of the complaint is such that it is impossible to further process this complaint. The problem is that:

1. Pursuant to the Prison Litigation Reform Act, Plaintiff may no longer proceed *in forma pauperis* in this Court unless he is under imminent danger of serious physical injury. The Act provides that:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). In this Court alone, Plaintiff has had three cases dismissed on the grounds that they were frivolous. (Nos. 1:00CV802; 1:00CV1200; 1:01CV702.) Plaintiff makes allegations that the hospital where he is housed is dirty, rusty, and unpleasant in many ways, but does not make allegations sufficient to show that he is in any imminent danger of serious physical injury in the present case.

Consequently, this particular complaint should be dismissed without prejudice to Plaintiff resubmitting his complaint with the \$350.00 filing fee. *In forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order.

IT IS RECOMMENDED that this action be filed and dismissed *sua sponte* without prejudice to Plaintiff resubmitting his complaint with the \$350.00 filing fee.

/s/ P. Trevor Sharp
United States Magistrate Judge

Date: October 15, 2009